XII-189 (Jail) C J.P.R.-/9-94

(जेल) 12 81/98

CF0000059979

(2)

APPEAL OF PRISONER

Division Bench (Criminal)

No दण्डिबंदी क्र:- 951/57 Name राजकुमार सतनामी

Father's name जंघारसतनामी, मुकाम-बुंदेला, थाना-चकरभाठा, जिला-बिलासपुर

Residence धारा- 302 भा.द.वि. Age 35 वर्ष

Sentenced to सजा-आजन्मकारावास on 12.05.1998

Under Section _____ by सत्रन्यायाधीश श्रीमान् वी.सी. यदु महोदय, बिलासपुर (छ.ग.)

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the Prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1 Date of Application for copy of Judgement _____

2 Date on which copy received _____

3 Date on which Appeal sent 22.05.1998

4 Whether the prisoner wishes to be represented or not. हाँ

No दण्डिबंदी क्र- 951/57- Name राजकुमार उ. जंघार सतनामी

Confined in सर्किल Jail बिलासपुर

No. _____ Dated 22.05.98 199 8

Forwarded to the रजिस्ट्रार महोदय माननीय उच्च न्यायालय बिलासपुर (छ.ग.)

to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

22.5.98

Superintendent,
Jail

Date of receipt in _____ Office _____

Date of receipt of record to accompany the _____

Memo of Appeal to the Appellate court _____

No _____ Dated _____ 199 _____

Forwarded to the

A.F.R.
DB
27/4/06

(28)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1281 of 1998

Rajkumar

- Versus -

State of Madhya Pradesh (now Chhattisgarh)

JUDGMENT FOR CONSIDERATION

Sd/-
L.C.BHADOO
Judge

HON'BLE MR. JUSTICE DHIRENDRA MISHRA

Sd/-
DHIRENDRA MISHRA
Judge

POST FOR JUDGMENT ON 27TH APRIL, 2006

Sd/-

JUDGE
26.4.2006

(21)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1281 of 1998

Rajkumar

- Versus -

State of Madhya Pradesh (now Chhattisgarh)

Present: -

Mr. Sachin Singh Rajput, Advocate: For the appellant.

Mr. U.N.S. Deo, Addl. Public Prosecutor
with Mr. M.P.S. Bhatia, Panel Lawyer: For the State/respondent.

[

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND

HON'BLE MR.DHIRENDRA MISHRA, JJ.

J U D G M E N T

(Delivered on 27th April, 2006)

Following judgment of the Court was delivered by *L.C. Bhadoo, J*:-

1. Appellant Rajkumar has preferred this appeal under Section 374 (2) of the Code of Criminal Procedure through the Jailor, Central Jail, Bilaspur questioning the legality & correctness of judgment of conviction and order of sentence dated 12th May, 1998 passed by learned 7th Additional Sessions Judge, Bilaspur in Sessions Trial No.214/97 whereby learned Additional Sessions Judge after holding the accused/appellant guilty under Section 302 of the I.P.C. for committing murder of his father Aadhaar, sentenced him to undergo imprisonment for life.

2. Brief facts leading to filing of this appeal are that on 13.2.1997 when deceased Aadhaar, father of accused/appellant herein, was sleeping in the house on a cot by covering his body with a Chadar, the accused/appellant all of a sudden picked up the lathi, which was lying

near the cot, attacked the deceased with the same on his head, as a result of which deceased sustained severe injuries, even the skull was fractured. On Coming to know about the incident, Jaikumar, younger brother of accused, took his father to the Police Station Chakarbhata, informed the police and thereafter, took his father to Dharam Hospital, Bilaspur for treatment, where Aadhaar succumbed to the injuries on 15.2.1997. As such, a merg intimation (Ex.P-6) was sent by the hospital to the Police Station City Kotwali, Bilaspur, based on that, the offence under Section 302 of IPC at Sr. No. 0 was registered under Ex.P-4 and thereafter, same was forwarded to the Police Station Chakarbhata under whose jurisdiction the offence was committed in Village Bundela. The Station House Officer, Police Station Chakarbhata registered the regular Crime No.19/97 under F.I.R. (Ex.P-4). After registering the crime, the Investigating Officer took up the investigation, after giving notice (Ex.P-2) to the Panchas prepared the inquest (Ex.P-3) of the body of deceased Aadhaar. He took into possession the blood stained soil and plain soil from the place of occurrence. He also took into possession the weapon of offence, lathi and one towel under Ex.P-9. Site plan (Ex.P-10) of the place of occurrence was prepared. Lathi in question was sent for doctor's opinion under Ex.P-14 as to whether the injuries found on the head of deceased could be caused by it. The doctor gave his opinion vide Ex.P-19 that it was possible to inflict the injuries found on the head of Aadhaar by the lathi in question. Postmortem on the body of deceased was conducted in Dharam Hospital, Bilaspur by Dr. V.K. Verma, who prepared the postmortem report Ex.P-18 in which he opined that the death is due to internal haemorrhage and coma as a result of fracture of skull. Recovered articles were sent for chemical examination to Forensic Science Laboratory, Sagar from where report Ex.P-20 was received.

3. After completion of investigation charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class,

Bilaspur, who in turn committed the case to learned Sessions Judge, Bilaspur where learned Sessions Judge initially commenced the trial and recorded the evidence. However, later on, the case was transferred to learned 7th Additional Sessions Judge, Bilaspur who recorded the remaining evidence and also the statement of accused/appellant under Section 313 of the Cr.P.C. in which accused either denied the evidence or stated that he is not aware of the fact. The accused has also stated that on account of his ill mental health he committed the crime.

4. Learned Additional Sessions Judge after hearing the arguments of learned counsel for respective parties, convicted and sentenced the accused/appellant in the manner as mentioned in Para-1 of this judgment.

5. We have heard Mr. Sachin Singh Rajput, learned counsel for the appellant and Mr.U.N.S. Deo, Addl. Public Prosecutor with Mr. M.P.S. Bhatia, Panel Lawyer on behalf of the State/respondent.

6. Homicidal death of deceased Aadhaar is not in dispute.

7. The conviction has been challenged primarily on the ground that by reason of unsoundness of mind, at the time of commission of crime, the accused/appellant was incapable of knowing the nature of act and he was not knowing what is either wrong or contrary to the law. Therefore, as per provisions of Section 84 of the IPC the accused/appellant could not have been convicted.

8. Learned counsel for the accused/appellant while referring the evidence on record argued that at the time of commission of crime the accused/appellant was suffering from unsoundness of mind and he was not knowing the nature of act or that he was doing what was either wrong or contrary to law. In support of his contention, learned counsel drawn the attention of this Court towards the certificate Ex.C-1 issued by the Civil Surgeon, Sardar Patel Hospital, Bilaspur in

response to the order of learned Sessions Judge, Bilaspur, which shows that the accused/appellant was suffering from unsoundness of mind. He further submitted that even during the pendency of this appeal on the directions of the High Court of M.P., Jabalpur the accused/appellant was referred to Jabalpur for ascertaining his mental condition and vide letter dated 29.9.1999 the Medical Officer, Central Jail Hospital, Jabalpur informed the Court that the accused/appellant was sent for treatment to the Mental Hospital, Jabalpur, he was kept under observation and on 16.9.99 Dr. P.K. Joseph of Mental Hospital, Jabalpur after examining the accused/appellant, declared him a patient of "Paranoid Schizophrenia". After referring these two medical certificates he also argued that it is evident from the prosecution evidence that the accused/appellant was suffering from mental illness insanity since last 12 years and even before the date of commission of crime, accused/appellant disappeared from the house for a period of 6 years and returned to the house only 2-3 months prior to the date of incident. He further submitted that it has come in the evidence that even many times the accused used to roam in the village in naked condition and he also used to assault the villagers. Therefore, conviction of the appellant is bad in law and erroneous.

9. On the other hand, learned Additional Public Prosecutor with learned Panel Lawyer for the State supported the judgment of trial Court.

10. Having heard learned counsel for the parties, we have perused the record.

11. In order to seek protection under Section 84 of the Indian Penal Code, the onus is on the accused to establish that at the time of commission of offence he was suffering from unsoundness of mind. Section 84 contemplates that;

> "Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law

Therefore, when a plea of legal insanity is set-up, the Court has to ascertain whether at the time of commission of offence the accused, under the supervening circumstances on account of unsoundness of mind, was incapable of knowing the nature of act or that he was doing what was either wrong or contrary to the law. The crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed and in order to ascertain whether the accused was suffering from unsoundness of mind as to be entitled to the benefit of Section 84 of IPC can only be established from the circumstances, which preceded, attended and followed the crime. In this connection, as per the provisions of Section 105 of the Evidence Act there is burden on the accused to discharge the same in order to claim benefit of Section 84 of the I.P.C. Section 105 envisages that;

> "When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, 1860 or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

The provisions of Section 84 of IPC read with Section 105 of Evidence Act came up for consideration before the Hon'ble Apex Court in the matter of **Dahyabhai V. State of Gujarat** reported in **1964 (7) SCR 361** and the Hon'ble Apex Court held that;

> "...Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the Court may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged. The burden of proof on the accused to

prove the insanity is no higher than that rests upon a party to civil proceedings, which, in other words, means preponderance of probabilities..."

The Court further held that doctrine of burden of proof in the context of plea of insanity may be stated in the following words:

(1) the prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea: and the burden of proving that always rests on the prosecution from the beginning to the end of the trial.

(2) there is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by S.84 of the Penal Code: the accused may rebut it by placing before the court all the relevant evidence- oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings:

(3) Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the Court may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged."

12. Therefore, the prosecution, in a case of homicide shall prove beyond reasonable doubt that the accused caused death with the requisite intention described in Section 299 of the Indian Penal Code. This general burden never shifts and it always rests on the prosecution. But, under Section 105 of Evidence Act the burden of proving the existence of circumstances bringing the case within the said exception lies on the accused, and the court shall presume the absence of such circumstances. The accused has to rebut the presumption that such circumstances did not exist, by placing material before the court sufficient to make it consider the existence of such circumstances so probable that a prudent man would act upon them. The accused has to satisfy the standard of a

'prudent man'. If the material placed before the court, such as, oral and documentary evidence, presumptions, admissions or even the prosecution evidence, satisfies the test of 'prudent man' the accused will have discharged his burden.

13. As per letter of Medical Officer, Central Jail Hospital, Jabalpur dated 29.9.1999 the accused was examined by the doctor of Mental Hospital, Jabalpur and after examination the doctor diagnosed him as the patient of 'Paranoid Schizophrenia'. In a recent judgment of the Hon'ble Apex Court in the matter of **Shrikant Anandrao Bhonsle V. State of Maharashtra** reported in **AIR 2002 SC 3399**, the Hon'ble Apex Court placing reliance on the Modi's Medical Jurisprudence and Toxicology (22nd Edition) observed that:

> "What is paranoid schizophrenia, when it starts, what are its characteristics and dangers flowing from this ailment. Paranoid Schizophrenia, in the vast majority of cases, starts in the fourth decade and develops insidiously. Suspiciousness is the characteristic symptom of the early stage. Ideas of reference occur, which gradually develops into delusions of persecution. Auditory hallucinations follow, which in the beginning, start as sounds or noises in the ears, but are afterwards changes into abuses or insults. Delusions are at first indefinite, but gradually they become fixed and definite, to lead the patient to believe that he is persecuted by some unknown person or some superhuman agency. He believes that his food is being poisoned, some noxious gases are blown into his room, and people are plotting against him to ruin him. Disturbances of general sensation gives rise to hallucinations, which are attributed to the effects of hypnotism, electricity wireless telegraphy or atomic agencies. The patient gets very irritated and excited owing to these painful and disagreeable hallucinations and delusions. Since so many people are against him and are interested in his ruin, he comes to believe that he must be a very important man. The nature of delusions thus may change from prosecutory to the grandiose type. He entertains delusions of grandeur, power and wealth, and generally conducts himself in a haughty and overbearing manner. The patient usually

> retains his money and orientation and does not show signs of insanity, until the conversations is directed to the particular type of delusions from which he is suffering. When delusions affect his behaviour, he is often a source of danger to himself and to others."
>
> (Emphasis supplied)

14. In a recent paper published on 'Schizophrenia' written by Melissa K. Spearing, M.H.S. of the Office of Communications and Public Liaison, NIMH based on the study, research and resources of National Alliance for the Mentality III (NAMI), National Mental Health Association (NMHA) & National Institute of Mental Health Association (NIMH). It has been stated in the said paper that Schizophrenia is a chronic, severe and disabling brain disease. The severity of symptoms and long-lasting chronic pattern of Schizophrenia often cause a high decree of disability. The first signs of Schizophrenia often appear as confusing, or even shocking, changes in behaviour. However, the individual with "chronic" schizophrenia, or a continuous or recurring pattern of illness, often does not fully recover normal functioning and typically requires long term treatment, generally including medication, to control the symptoms. Coping with the symptoms of schizophrenia can be especially difficult for family members who remember how involved or vivacious a person was before they became ill. The sudden onset of severe psychotic symptoms is referred to as an "acute" phase of schizophrenia. "Psychosis", a common condition in schizophrenia, is a state of mental impairment marked by hallucinations, which are disturbances of sensory perception, and/or delusions, which are false yet strongly held personal beliefs that result from an inability to separate real from unreal experiences. Less obvious symptoms, such as social isolation or withdrawal, or unusual speech, thinking; or behaviour, may precede, be seen along with, or follow the psychotic symptoms.

15. Delusions are false personal beliefs that are not subject to reason or contradictory evidence and are not explained by a person's usual cultural concepts. Delusions may take on different themes. For example, patients suffering from paranoid-type symptoms roughly one-third of people with schizophrenia often have delusions of persecution, or false and irrational beliefs that they are being cheated, harassed, poisoned, or conspired against. These patients may believe that they, or a member of the family or someone close to them, are the focus of this persecution. Schizophrenia often affects a person's ability to "think straight". Thoughts may come and go rapidly; the person may not be able to concentrate on one though for very long and may be easily distracted, unable to focus attention. People with paranoid and psychotic symptoms, which can become worse if medications are discontinued, may also be at higher risk for violent behaviour. When violence does occur, it is most frequently targeted at family members and friends, and more often takes place at home.

(Emphasis supplied)

16. Now we shall proceed to scrutinize the evidence available on record to ascertain as to whether the accused on account of supervening circumstances by reason of 'Paranoid Schizophrenia' at the time of commission of offence was not capable of understanding the nature of the act, or that he is doing what is either wrong or contrary to law and for that purpose whether the accused has been able to discharge the burden of proof as per provisions of Section 105 of the Evidence Act, as per the principles enunciated by the Hon'ble Apex Court in the matter of Dahyabhai's case.

17. As has been mentioned in the earlier part of this judgment that during the trial on the orders of learned Sessions Judge, Bilaspur the accused/appellant was examined by the Civil Surgeon, Sardar Patel Hospital, Bilaspur and after examination doctor issued the certificate Ex.C-1 in which doctor diagnosed the accused as a case of

'Depressive Psychosis' and advised to refer him to Mental Hospital, Gwalior. In the said certificate it was further mentioned that the accused was kept under observation for 10 days i.e. from 9.8.1997 to 18.8.1997 and following points were observed in favour of his ill mental health:

i. Looks lunatic.
ii. Forced feeding, clothing & bathing.
iii. Not mixed with others.
iv. Sleeplessness.

As has already been mentioned above that during pendency of this appeal under the orders of the then High Court the accused was also examined in the Mental Hospital, Jabalpur and he was diagnosed as the patient of 'Paranoid Schizophrenia' in the year 1999.

18. PW-1 Jaikumar Manhar, brother of accused & son of deceased, has stated in his evidence that on coming to know about the assault made by the accused on his father he rushed towards the residence, after reaching the house, he saw that his father was sleeping on the cot in unconscious stage, there was injury on his head and blood was oozing out of it. At that time, accused was in his room and at that time the condition of the accused was just like a mad man. In the cross-examination, which was recorded on 19.1.1998, this witness has stated that his brother was mad since last 12 years, due to madness he remained out of village for a period of 6 years and about 3 months prior to the date of incident he returned to the village. Accused used to roam in village in naked condition. Accused used to assault villagers. He, even informed the police thrice about the mental condition of accused. They used to keep the accused in a room and provide food to him there only. Many a times, accused used to assault them also and some time he used to remain silent. PW-2 Christ Bai, daughter-in-law of deceased, has stated in the cross-examination that accused is elder brother of her husband, after marriage when she came in the house, accused was not in the house, he returned 1-2 months prior to the date of incident. Accused is

mad, he behaves in unusual manner, some time he roam without clothes and some time he assault anyone. PW-3 Neeras Bai, mother of accused & wife of deceased, has stated in examination-in-chief that accused was just like a mad man. In the cross-examination she has stated that accused is mad since last 12 years, he used to throw his clothes and roam in naked condition, he was behaving different from a man of ordinary prudence and he disappeared from the house for last 6 years and returned to the house 2-3 months prior to the incident. He was just like a mad man. Even the Sub-Inspector Shri B.K. Singh (PW-4) in the cross-examination has stated that he had not investigated regarding the beating by accused in a stage of unsoundness of mind. During investigation he came to know that accused used to behave like a mad man and he went to Uttar Pradesh from where 2-3 months prior to the date of incident he returned to the village. When he arrested the accused, his condition was just like a mad man.

19. Therefore, from the above evidence of family members of the accused and evidence of Investigating Officer (PW-4) coupled with the medical certificate Ex.C-1 and the medical examination conducted by the doctor of Mental Hospital, Jablapur in which he diagnosed the accused as a patient of 'Paranoid Schizophrenia' and also the fact that the accused/appellant without grudge or anything else against his father, when the deceased Aadhaar was sleeping, the accused, all of a sudden, picked up the lathi, which was lying near the cot on which deceased was sleeping and assaulted his father with that lathi on his head. Moreover, after assaulting the deceased, the accused again went inside his room and was sitting in the room just like a mad man. Therefore, apart from the medical & oral evidence regarding the unsound mind of accused, this conduct of accused assaulting his father without any rhyme or reason cannot be termed to be an action of a man of ordinary prudence. As such, the conduct of the accused/appellant shows that at the time of commission of

crime he was suffering from unsoundness of mind, therefore, based on the principles enunciated by the Hon'ble Apex Court in Dahyabhai's case, we are of the considered opinion that there is reasonable doubt that at the time of commission of offence the appellant was incapable of knowing the nature of act by reason of unsoundness of mind and thus, he is entitled to the benefit of Section 84 of the IPC.

20. In the result, the appeal succeeds and same is allowed. The conviction and sentence imposed on the accused/appellant are set aside. He be set at liberty forthwith unless required to be detained in any other case.

21. Before parting with judgment, we would like to observe that in the whole State of Chhattisgarh there is not a single Mental Hospital, whereas, looking to number of cases coming up before this Court in which plea of insanity & unsound mind is raised and also considering the fact that rural population of this State is very-very poor, high population is living below the poverty line, it is high time for the popular Government to consider for opening of a specialist Mental Hospital and creation for one specialist post of Doctor in every District Hospital for treatment of mentally challenged persons.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Roshan/-